IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 1688 of 2007()

CRIME NO.39/04 OF CENTRAL POLICE STATION, ERNAKULAM

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PETITIONER:

Y.P.BAIJU, MANAGING DIRECTOR,
SKYLINE INTERNATIONAL MANPOWER
RECRUITING AGENTS,
VEENUS CHAMBERS, VALANJAMBALAM,
ERNAKULAM.

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, ERNAKULAM.

2. SABU, S/O.JAMES ANTHIKADAN HOUSE,
KALLOOR P.O., VIA, ALAGAPPA NAGAR,
THRISSUR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1688 of 2007

Dated this the 25th day of May 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 420 I.P.C. He was granted anticipatory bail by the learned Sessions Judge as per Annexure A1 order. He has not been arrested by the police though the petitioner submits that he had appeared before the investigating officer and had also handed over the relevant documents to the police. The investigation is now complete. Final report has been filed by the investigating officer. The petitioner laments that the investigating officer had initially conveyed the impression that the case shall be referred. Be that as it may, the final report has now been filed. The petitioner is shown as absconding, it is submitted. Cognizance has been taken. The learned Magistrate has issued a non-bailable warrant to procure the presence of the petitioner. The petitioner, therefore, finds himself in the unenviable predicament of a non-bailable warrant of arrest issued by the learned Magistrate at the time of taking cognizance, chasing him. According to the petitioner, he was always willing to appear before the investigating officer or the court. He had never been arrested and in these circumstances, issue of a non-bailable warrant against the petitioner is incorrect and illegal. The learned counsel for the petitioner particularly relies on the provisions of Section 438 Cr.P.C which I extract below.

> **438** (3): If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the court under sub section(1).
>
> (emphasis supplied)

2. Where a person has been granted anticipatory bail and the learned Magistrate at the stage of cognizance choose to issue a warrant of arrest, he can issue only a bailable warrant of arrest, it is evident from the provision extracted above. I am, in these circumstances, satisfied that the petitioner is entitled to the relief claimed by him.

3. In the result:

(i) this petition is allowed.

(ii) The non bailable warrant of arrest issued by the learned Magistrate against the petitioner shall not be executed.

(iii) The petitioner shall appear before the learned Magistrate within a period of ten days and shall seek bail before the learned Magistrate. Appropriate orders shall be passed by the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

438. **Direction for grant of bail to person apprehending arrest**:- Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) Where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007